

Petitions & Preliminary Inquiries

Summary of Contents

6.1	Persons Who May Submit a Petition to Court	1
6.2	Petitions to Initiate Child Protective Proceedings	1
6.3	Required Review of the Petition by the Prosecuting Attorney	2
6.4	Prosecuting Attorney as Petitioner	2
6.5	Required Filing of Petition by Family Independence Agency	3
6.6	Required Request for Termination of Parental Rights at Initial Dispositional Hearing	4
6.7	Permissive Requests for Termination of Parental Rights	4
6.8	Required Contents of Petitions	4
6.9	Required Information About Other Court Matters Involving Members of Same Family	5
6.10	Time Requirements for Filing a Petition in Family Division in Cases Involving Severe Physical Injury or Sexual Abuse	6
6.11	Preliminary Inquiries	7
6.12	Preliminary Inquiry May Be Held If the Petition Does Not Request Placement of Child	7
6.13	Referees Who May Conduct Preliminary Inquiries	8
6.14	Court's Options Following Preliminary Inquiries	8
6.15	Establishment of Probable Cause at Preliminary Inquiries	8

6.1 Persons Who May Submit a Petition to Court

MCL 712A.11(1); MSA 27.3178(598.11)(1), allows “a person” to give to a court information concerning a child, and the court may then take appropriate action concerning the child. Typically, either a child protective worker or a prosecuting attorney acting on behalf of the Family Independence Agency drafts and files a petition seeking court jurisdiction over a child suspected of being abused or neglected. However, school officials may file petitions alleging “educational neglect” under MCL 712A.2(b)(1); MSA 27.3178(598.2)(b)(1). The Children’s Ombudsman, guardians, custodians, and foster parents (as “concerned persons”) may file petitions seeking termination of parental rights.*

*See Section 2.21 (required response by FIA following investigation of suspected abuse or neglect).

6.2 Petitions to Initiate Child Protective Proceedings

A petition* is a complaint or other written accusation, verified in the manner provided in MCR 2.114(A), that a parent has harmed or failed to properly care for a child. MCR 5.903(A)(14). A petition may be verified by an oath or affirmation of the person having knowledge of the facts stated, or by a signed and dated declaration. MCR 2.114(B)(2). See *In re Hatcher*, 443 Mich 426, 433–36 (1993) (purpose of petition is to allow court to determine if statutory basis for jurisdiction exists).

*See Form JC 04.

*See Sections 4.1 and 4.6 for a discussion of emergency protective custody.

Absent exigent circumstances, a request for court action to protect a child must be in the form of a petition. MCR 5.961(A). See also Forms JC 01–02 (Complaint [Request for Action]), which may be utilized when a child is placed before a formal petition is presented. An officer may without court order remove a child from the child’s surroundings and take the child into temporary custody if, after investigation, the officer has reasonable grounds to conclude that the health, safety, or welfare of the child is endangered. MCR 5.963(A) and MCL 712A.14(1); MSA 27.3178(598.14)(1). The officer must then ensure that a petition is prepared and submitted to the court. MCR 5.963(C)(5).*

6.3 Required Review of the Petition by the Prosecuting Attorney

If the court requests, the prosecuting attorney must review the petition for legal sufficiency and appear at any proceeding. MCR 5.914(A). “Prosecuting attorney” means the prosecuting attorney of the county in which the court has its principal office or an assistant to the prosecuting attorney. MCR 5.903(C)(7).

In addition, if requested by the Family Independence Agency or an agent under contract with the FIA, the prosecuting attorney must act as legal consultant for the FIA or its agent at all stages of the proceedings. If the prosecuting attorney does not appear on behalf of the FIA or its agent, the FIA may contract with an attorney of its choice. MCL 712A.17(5); MSA 27.3178(598.17)(5).

6.4 Prosecuting Attorney as Petitioner

*See Section 2.10 for a discussion of the required notification of the prosecuting attorney during the investigation of certain cases of suspected abuse or neglect.

The prosecuting attorney may file a petition independent of the Family Independence Agency. In *In re Jagers*, 224 Mich App 359 (1997), although the Family Independence Agency had retained independent legal counsel, the prosecuting attorney filed a petition alleging abuse and neglect. The Court of Appeals held that the prosecuting attorney has standing, independent of the Family Independence Agency, to file a petition in protective proceedings. *Id.*, at 362. MCL 712A.11(1); MSA 27.3178(598.11)(1), allows “a person” to give information to the court that may serve as the basis for the court’s assumption of jurisdiction. *Id.*, at 362–63. The Court also distinguished *In re Hill*, 206 Mich App 689 (1994), where the prosecutor was prevented from amending and supplementing petitions originally submitted by the FIA, which had obtained legal representation by the attorney general’s office. The prosecuting attorney may not, the Court in *Hill* held, amend another party’s petition. The public policy of protecting children supports allowing a prosecuting attorney to act independently of the FIA when they disagree on whether a petition should be filed. *Jagers, supra*, at 365.*

See also MCL 712A.19b(1); MSA 27.3178(598.19b)(1), and MCR 5.974(A)(2) (prosecuting attorney may file petition for termination of

parental rights if the child remains in foster care, even though the prosecuting attorney was not acting as legal consultant to the FIA).

6.5 Required Filing of Petition by Family Independence Agency*

The Family Independence Agency must file a petition seeking Family Division jurisdiction of the child under MCL 712A.2(b); MSA 27.3178(598.2)(b), if any of the following circumstances exist:

(a) The Family Independence Agency determines that a parent, guardian, or custodian, or a person who is 18 years of age or older and who resides for any length of time in the child's home, has abused the child or a sibling and the abuse included one or more of the following:

- (i) abandonment of a young child;
- (ii) criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate;
- (iii) battering, torture, or other severe physical abuse;
- (iv) loss or serious impairment of an organ or limb;
- (v) life threatening injury; or
- (vi) murder or attempted murder.

(b) The Family Independence Agency determines that there is a risk of harm to the child and either of the following is true:

- (i) The parent's rights to another child were terminated as a result of proceedings under MCL 712A.2(b); MSA 27.3178(598.2)(b), or a similar law of another state.
- (ii) The parent's rights to another child were voluntarily terminated following the initiation of proceedings under MCL 712A.2(b); MSA 27.3178(598.2)(b), or a similar law of another state.

MCL 722.638(1)(a)–(b); MSA 25.248(18)(1)(a)–(b).

*See Section 2.21 for a detailed discussion of required responses by FIA following the field investigation of allegations of abuse or neglect.

Note: MCL 722.638; MSA 25.248(18), was amended in 1998 to clarify when the Family Independence Agency is required to file a petition, and when that petition must contain a request for termination of parental rights. See 1998 PA 428, repealing 1998 PA 383. The amended provision, quoted in part above, is effective March 23, 1999. Under the provision in effect prior to March 23, 1999, the FIA was not required to determine, before filing a petition for court jurisdiction, that there was risk of harm to the child of a parent who had previously had his or her parental rights to another child terminated. For discussion of that portion of the amended statute dealing with the required request for termination, see Sections 6.6, immediately below, and 2.25.

*See Section 18.17 for discussion of the requirements to terminate parental rights at the initial dispositional hearing.

6.6 Required Request for Termination of Parental Rights at Initial Dispositional Hearing

In a mandatory petition filed under MCL 722.638(1)(a)–(b); MSA 25.248(18)(1)(a)–(b), explained in Section 6.5, immediately above, if a parent is a suspected perpetrator of the abuse or is suspected of placing the child at an unreasonable risk of harm due to the parent’s failure to take reasonable steps to intervene to eliminate that risk, the Family Independence Agency must include in the mandatory petition a request for termination of parental rights at the initial dispositional hearing. MCL 722.638(2); MSA 25.248(18)(2).*

*See Section 18.3 for a detailed discussion of these petition requirements.

6.7 Permissive Requests for Termination of Parental Rights

A request for termination of parental rights must be made in an original, amended, or supplemental petition. MCR 5.974(A)(2). Termination of parental rights at the initial dispositional hearing may be requested in an original or amended petition, and termination of parental rights on the basis of changed circumstances or after the child has been placed in foster care may be requested in a supplemental petition.*

*Sections 18.26–18.40 contain petition requirements for termination of parental rights under each subsection of § 19b(3) of the Juvenile Code.

6.8 Required Contents of Petitions*

A petition must contain the following information, if known:

- (1) the child’s name, address, and date of birth;
- (2) the names and addresses of:
 - (a) the child’s mother and father,
 - (b) the parent or person who has custody of the child, if other than a mother or father,
 - (c) the nearest known relative of the child, if no parent can be found, and

- (d) any court with prior continuing jurisdiction;*
- (3) the essential facts which constitute an offense against the child under the Juvenile Code;
- (4) a citation to the section of the Juvenile Code relied upon for jurisdiction;*
- (5) the child's membership or eligibility for membership in an American Indian tribe or band, if any, and the identity of the tribe;*
- (6) the type of relief requested, including whether temporary or permanent custody is sought;* and
- (7) information required by MCR 3.206(A)(4), identifying whether a Family Division matter involving members of the same family is or was pending.*

*See Section 3.16 for required procedures.

*See Section 3.4 for a discussion of Family Division jurisdiction.

*See Chapter 20 for required procedures.

*See Section 18.2 (effects of termination of parental rights).

*See Section 6.9, below.

MCR 5.961(B)(1)–(7).

Information provided in the petition shall be verified and may be upon information and belief. MCL 712A.11(3); MSA 27.3178(598.11)(3). If any of the facts required to be contained in the petition are unknown to the petitioner, the petition must state that the facts are unknown. MCL 712A.11(4); MSA 27.3178(598.11)(4). See also *In re Jagers*, 224 Mich App 359, 365 (1997).

A petition need not enumerate every theory or argument in support of Family Division jurisdiction. *In re Arntz*, 125 Mich App 634, 639 (1983), modified 418 Mich 941 (1984). Nor must the petition disprove every possible innocent explanation for an alleged injury. *In re Martin*, 167 Mich App 715, 723–24 (1988).

A petition may be amended at any stage of the proceedings as the ends of justice require. MCL 712A.11(6); MSA 27.3178(598.11)(6). See *In re Slis*, 144 Mich App 678, 684 (1985) (requirements of due process were satisfied where petition was amended on the record to include respondent-parent's name).

6.9 Required Information About Other Court Matters Involving Members of Same Family

A petition must identify whether a Family Division matter involving members of the same family is or was pending, and contain the information, if known, required by MCR 3.206(A)(4). MCR 5.961(B)(7).

Note: In many instances, petitioners do not provide the information required by MCR 3.206(A)(4), due at least in part to the difficulties in gathering information on families who have cases pending in other Michigan counties.

MCR 3.206(A)(4)(a)–(b) requires the petition to contain one of the two following statements:

(a) There is no other pending or resolved action within the jurisdiction of the family division of the circuit court involving the family or family members of the person[s] who [is/are] the subject of the complaint or petition.

(b) An action within the jurisdiction of the family division of the circuit court involving the family or family members of the person[s] who [is/are] the subject of the complaint or petition has been previously filed in [this court]/[____ Court], where it was given docket number ____ and was assigned to Judge _____. The action [remains]/[is no longer] pending.

Whenever practicable, two or more matters within the Family Division’s jurisdiction pending in the same judicial circuit and involving members of the same family must be assigned to the judge who was assigned the first matter. MCL 600.1023(1); MSA 27A.1023(1).

6.10 Time Requirements for Filing a Petition in Family Division in Cases Involving Severe Physical Injury or Sexual Abuse

Within 24 hours after the Family Independence Agency determines that a child was severely physically injured or sexually abused, the agency must file a petition seeking Family Division jurisdiction under MCL 712A.2(b); MSA 27.3178(598.2)(b). MCL 722.637; MSA 25.248(17).

“Sexual abuse” is defined as engaging in “sexual contact” or sexual penetration” as those terms are defined in §520a of the Penal Code:

- F “Sexual contact” means the intentional touching of the victim’s or actor’s intimate parts or the intentional touching of the clothing covering the immediate area of the victim’s or actor’s intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification.
- F “Sexual penetration” means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body, but emission of semen is not required.

MCL 722.622(q); MSA 25.248(2)(q), and MCL 750.520a(k) and (l); MSA 28.788(1)(k) and (l).

“Severe physical injury” means brain damage, skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprains, internal injuries, poisoning, burns, scalds, severe cuts, or any other physical injury that seriously impairs the health or physical well-being of a child. MCL 722.628(3)(c); MSA 25.248(8)(3)(c).

6.11 Preliminary Inquiries

When a petition is not accompanied by a request for placement of the child and the child is not in temporary custody, the court may conduct a preliminary inquiry to determine the appropriate action to be taken on a petition. MCR 5.962(A). A preliminary inquiry is an informal review by the court to determine appropriate action on a petition. MCR 5.903(A)(17). No hearing is held: the judge or referee is only required to review the petition to determine the appropriate course of action.

Because a preliminary inquiry is not a hearing, no memorandum is required.* However, a record of the proceedings at a preliminary inquiry may be made and preserved by a written memorandum executed by the judge or referee setting forth the findings and procedures followed. MCR 5.925(B). There is no requirement that the judge or referee take testimony or examine evidence. The judge or referee is merely required to examine the petition and make his or her determination in accordance with MCR 5.962.

*But see Form JC 11.

Note: If the petition is not authorized for filing after the preliminary inquiry, any record of the proceeding may be treated as a non-public file. In such cases, nothing would be filed with the county clerk. See Section 22.3.

6.12 Preliminary Inquiry May Be Held If the Petition Does Not Request Placement of Child

If a person gives information to the court that a child is within MCL 712A.2(b) or (c); MSA 27.3178(598.2)(b) or (c),* a preliminary inquiry may be made to determine whether the interests of the public or the child require that further action be taken. MCL 712A.11(1); MSA 27.3178(598.11)(1).

*See Sections 3.4 and 3.15 for a discussion of these provisions.

When a petition is not accompanied by a request for placement of the child and the child is not in temporary custody, the court may conduct a preliminary inquiry to determine the appropriate action to be taken on a petition. MCR 5.962(A). On the other hand, if the child is in custody or placement is requested, the court must hold a preliminary hearing within 24 hours after the child is taken into court custody. MCR 5.965(A).*

*See Chapter 4 (obtaining custody of child) and Chapter 7 (preliminary hearings).

“Placement” of the child means court-approved removal of a child from the parental home and placement in foster care, in a shelter home, in a hospital, or with a private treatment agency. MCR 5.903(C)(6). “Foster care”

includes care provided to a child in a foster family home or group home, a child caring institution, or a relative's home pursuant to a court order. MCR 5.903(C)(4) and MCL 712A.13a(1)(d); MSA 27.3178(598.13a)(1)(d).

6.13 Referees Who May Conduct Preliminary Inquiries

The court may assign a referee to conduct a preliminary inquiry. MCR 5.913(A)(1). Referees who conduct preliminary inquiries need not be licensed attorneys. MCR 5.913(A)(3).

6.14 Court's Options Following Preliminary Inquiries

At the preliminary inquiry, the court may:

- (1) dismiss the complaint or deny authorization of the petition;
- (2) refer the matter to alternative services; or
- (3) authorize the filing of a petition upon a showing of probable cause that one or more allegations in the petition are true and fall within MCL 712A.2(b); MSA 27.3178(598.2)(b).

MCR 5.962(B)(1)–(3) and MCL 712A.13a(2); MSA 27.3178(598.13a)(2).

A “petition authorized to be filed” refers to written permission given by a judge or referee to file a petition containing allegations against the respondent with the clerk of the court. MCR 5.903(A)(15). An authorized petition is deemed filed when it is delivered to, and accepted by, the clerk of the court. MCR 5.903(A)(5).

If the court authorizes the petition and the child is not in custody, a trial must be held within 6 months after the filing of the petition. MCR 5.972(A).

6.15 Establishment of Probable Cause at Preliminary Inquiries

The requisite showing of probable cause at a preliminary inquiry may be established with such information and in such manner as the court deems sufficient. MCR 5.962(B)(3).